FILE COPY

Office - Supreme Court, U. S.
FILED
OCT 18 1947
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1947 — No. 349

WALTER P. GARDNER, Trustee of The Central Railroad Company of New Jersey,
A Debtor-Petitioner,

vs.

THE STATE OF NEW JERSEY,
A Creditor-Respondent.

REPLY TO BRIEF OF THE STATE OF NEW JERSEY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JAMES D. CARPENTER, JR.,
Counsel for the Trustee,
75 Montgomery Street,
Jersey City 2, New Jersey.

ALEXANDER H. ELDER,
SAMUEL M. COOMBS, JR.,
Of Counsel.

307 BAR PRESS, INC., 47 WEST ST., NEW YORK. BO. 9—0157 - 8

IN THE

Supreme Court of the United States

October Term, 1947 — No. 349

WALTER P. GARDNER, Trustee of The Central Railroad Company of New Jersey,
A Debtor-Petitioner,

vs.

THE STATE OF NEW JERSEY,
A Creditor-Respondent.

REPLY TO BRIEF OF THE STATE OF NEW JERSEY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Reply to Respondent's "Statement"

There are two assertions of fact in the respondent's "Statement" which might prove misleading.

First: On page 3 in respondent's brief in describing the waivers which were required to be filed in order to comply with the offer of compromise contained in the Settlement Acts, the respondent states that:

> "The proposed waiver covered the years 1932 to 1936, inclusive, notwithstanding that there was no conceivable chance of further contest concerning such years."

The fact is that the waivers filed by the petitioner as required by the Settlement Acts not only covered the con-

tested taxes for the years 1932 to 1936, inclusive, but also the taxes for the years 1937 to 1941, inclusive. The respondent could not and, therefore, does not suggest that the taxes for those years were not open to contest since the record shows that as to the years 1937 and 1938 the petitioner, as a necessary condition of complying with the Settlement Acts, waived the right to a judicial review and as to the years 1939 to 1941, inclusive, it waived the right even to a hearing by the Board of Tax Appeals.

Second: At page 5 of respondent's brief, the opinion of Judge Maris *In Re Central Railroad Company,* 136 Fed. (2d) 633, is quoted to the effect that:

> "The tender (provided for by the Settlement Acts) though acknowledged was not accepted by the Treasurer and consequently was without legal effect. In fact the Treasurer was powerless to accept the tender by reason of the injunction issued by the Court of Chancery."

And on page 7 it is asserted that:

> "there could not have been the requisite performance by the petitioner in order to comply with the Settlement Acts."

This persistent assertion of the respondent completely disregards the fact (a) that the original tenders constituting the Trustee's acceptance of the State's offer of compromise contained in the first Tax Settlement Act (Chapter 290, P. L. 1941) were filed with the State Treasurer on August 11, 1941, while the jurisdiction of the Court of Chancery was not invoked until the filing of the civil information suit on September 4, 1941, and (b) that the second Tax Settlement Act (Chapter 241, P. L. 1942) was so framed as to constitute an offer of compromise by the

State which could be accepted by "any railroad tax payer desiring to accept the provisions of this Act" by complying with the State's conditions and without calling for any action whatever by any State officer or official.

Judge Maris' conclusions were erroneous because the very essence of the question of the settlement and compromise of the State's claim involved in this litigation is (1) that the petitioner unquestionably waived valuable rights as a necessary condition of accepting the State's offers contained in the Tax Settlement Acts and (2) that though the first Tax Settlement Act required the approval (merely a ministerial act) of the State Attorney General of the undertakings and waivers filed by the trustee, which constituted his acceptance of the State's offer of compromise contained in the first Tax Settlement Act, the second Tax Settlement Act provided for the consummation of a compromise which did not involve any action, ministerial or otherwise, by any State official. The petitioner having surrendered valuable rights, as hereinbefore pointed out, in order to accept the State's offers of settlement and compromise contained in the two acts, it is obvious that the injunction, imposed by the Court of Chancery in the case of *Wilentz* v. *Hendrickson*, against only the State Treasurer, could not in any way affect, or preclude the acceptance by the Trustee of the State's offers of settlement and compromise made in public statutes.

Reply to Respondent's "Argument"

On page 11 of the respondent's brief it is asserted that the well settled New Jersey rule, that a statute held unconstitutional is not void ab initio and that actions taken in good faith under the statute may be effective, has been repudiated by the decision in *Hyman* v. *Long Branch Kennel Club,* 115 N. J. L. 123. An examination of the latter decision will make clear that while it criticizes a dictum in *Lang* v. *Bayonne,* 74 N. J. L. 455, it expressly states that "we have no present quarrel" with the essential point decided in that case. As stated in our original brief (p. 33 and p. 38), it is today the settled law in New Jersey that rights may have become vested under a statute subsequently held unconstitutional. In fact, following the Hyman decision, the Court of Errors in *Byrnes* v. *Boulevard Commissioners,* 121 N. J. L. 497 (1939), affirmed the doctrine of the *Lang* case, on which we rely. This doctrine has peculiar force in a case, like the present, where a new party is involved and the holding of unconstitutionality was based on a stipulation of facts between other parties.

Neither the State's brief nor the brief of Jersey City, as *amicus curiae,* attempts to justify the *reasoning* of the Third Circuit's opinion. The State's brief at page 14 explains that said court misunderstood the State's argument and in the following pages (pp. 15 to 17, inc.) labors to so explain the decision as to justify the "result" on the theory that the court below did not mean what it clearly said. Jersey City's brief (p. 4) frankly opens its argument by saying, "We submit that *regardless of the reasoning,* etc." of the Third Circuit Court and then boldly announces (p. 10):

> "Both the majority and minority opinions in the Circuit Court of Appeals concluded that the doctrine of

> the *Spector Motor, Inc.* case (*supra*) was inapplicable here for the reason that in that case the State statute involved had not been previously construed. We respectfully dissent from that asserted distinction."

The immediate question before this court is not on the merits but on whether the Third Circuit's decision has so far departed from the accepted and usual course of judicial procedure as to call for review by this Court. On that question we submit that regardless of the result reached in the decision, if its reasoning was clearly unsound, then the case calls for a review by this court. This is so because if the decision in its present form stands it will promulgate what Judge Goodrich describes as "a very dangerous doctrine" (App. 47) and may lead to endless confusion in the future administration of the Bankruptcy Act.

As indicated by the recent decision of this court in *Meredith* v. *Winter Haven*, 320 U. S. 228, the rule is that it is "the duty of the Federal courts, if their jurisdiction is properly invoked, to decide questions of State law whenever necessary to the rendition of a judgment". The State seems to recognize how "dangerous" it would be to require Federal courts to refer questions of local law to State courts in other than exceptional situations by stating:

> "The *Meredith* case did not present those special circumstances which dictated the application of the above-mentioned equitable rule in the cited cases. Had this Court held otherwise than it did, then there would have been authority whereby in every diversity of citizenship case the jurisdiction of the District Court could be denied if some undecided question of local law should be raised."

Likewise, if the opinion of the Third Circuit were permitted to stand, it may result that in countless cases arising under

the Bankruptcy Act, where State law questions are constantly arising, the Bankruptcy Courts may feel obliged to interrupt their proceedings while questions are referred to State courts and thus one of the primary objectives of the Bankruptcy Act will be defeated.

As Chief Justice Stone in *Prudence Realization Corporation* v. *Geist*, 316 U. S. 89 at 95, said:

> "The bankruptcy act prescribes its own criteria for distribution to creditors. In the interpretation and application of federal statutes, federal not local law applies. (Many cases cited.)'
>
> "See also *Vanston Bondholders Protective Committee* v. *Green*, 329 U. S. 156, 162-3."

Respectfully submitted,

JAMES D. CARPENTER, JR.,
Counsel for the Trustee.

Oct. 17, 1947

ALEXANDER H. ELDER,
SAMUEL M. COOMBS, JR.,
Of Counsel.